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Supreme Court, U.S.
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No. 96-45

In The

Supreme Court of the United States

October Term, 1995

MICHAEL COFFEY,

Petitioner,

vs.

ERNEST WINSKE and DAVID WINSKE,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF FOR PETITIONER

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To the Chief Justice and Associate Justices of the United States Supreme Court:

To the extent that the Court may consider the Respondents' letter and accompanying documents as the response to Petitioner's Petition for a Writ of Certiorari requested by the Court in its letter of August 20, 1996, Petitioner Michael Coffey submits this Reply Brief.

I. THE RESPONDENTS HAVE NOT PROPERLY RESPONDED TO THE PETITION FOR A WRIT OF CERTIORARI

It should be noted at the outset that, despite the admonishment of Supreme Court Rule 15, the Respondents, in their letter (and accompanying documents) of August 27, 1996, do not attempt to point out any "perceived misstatement" made in Coffey's Petition. Rather, they imply some sort of economic hardship by claiming that they "can ill afford or justify" preparing an opposing brief. However, the Respondent did not seek to proceed *in forma pauperis* nor did they even make a motion seeking to dispense with normal document preparation requirements. Respondents apparently seek to create of whole cloth a new procedural rule that a party need not comply with the rules of this Court by simply asserting an "ill-afford/ justification standard." What the Respondents do not mention, but what should be apparent from the procedural history of this matter, is that the Respondents have had the resources and wherewithal to file a lawsuit in federal court (in which they alleged having had commodity trading losses in excess of $50,000) and then to initiate and pursue an arbitration proceeding (which lasted over four days) (Petitioner's Appendix at 9a). Indeed, if the Respondents were as desirous of justice as they claim, it should not be that great a hardship to file a proper response particularly where the document preparation

rules of this Court are "functional in nature" and do not require imprinting on a press. *Snider v. All State Administrators, Inc.*, 414 U.S. 685, 686 (1974).

Petitioner Michael Coffey, having already expended considerable amounts in his own defense, has also found it difficult to afford and justify the expenses of initiating a Petition for Certiorari. However, Petitioner Coffey has done so and, should certiorari be granted, stands ready to do all that is required to present his case before this Court. All of this should indicate, notwithstanding the self-righteous tone of the Respondents' letter, that Petitioner Coffey is the party who hopes and prays that "some justice will finally be done in this case."

In any event, apart from the Respondents' failure to even make an effort to comply with this Court's rules, the Respondents completely fail to counter or respond to any of Petitioner's arguments: the "memoranda previously filed with the District Court" and now submitted to this Court by Respondents deal largely with issues not pursued by Petitioner at either the First Circuit Court of Appeals or at this Court.

Instead of offering one solid reason why this Court should not grant certiorari the Respondents attempt to substitute indignation for reason by making various inflammatory assertions about the Petitioner and his Petition (in documents that they did not care to even attempt to reformat to Supreme Court requirements). Petitioner Michael Coffey respectfully submits that he has raised issues which entitle his Petition to more consideration than a simple rejection based upon the Respondents' indignation.

II. THE PETITIONER'S ARGUMENTS ARE NOT "TRANSPARENT:" BUT ARE ACTUALLY REPRESENTATIVE ON ONGOING CONTROVERSIES INCLUDING A CONFLICT AMONG THE UNITED STATES COURTS OF APPEALS

Unlike the Respondents, Petitioner Coffey will not adopt the tone offered by the Respondents when they choose to inform this Court that they will "assume" that this Court "will see the transparency of the appellant's argument."[1] There is nothing transparent about Michael Coffey's arguments. Rather, Coffey submits that there are actual controversies of which his case is representative. Indeed the Respondents do not and can not dispute that there is a genuine conflict in the United States Circuit Courts of Appeals over the extent to which an arbitration body may decide its own jurisdiction (Petitioner's Petition for a Writ of Certiorari, pp. 21-23). *Compare Shearson Lehman Hutton, Inc. v. Waggoner,* 944 F.2d 114, 121 (2d Cir. 1991) *with Robbins v. Chipman Trucking, Inc.,* 886 F.2d 899, 901-902 (7th Cir. 1988). Similarly, the Respondents choose not to address the other issues raised by Petitioner Coffey, among which are: (1) The enforcement of arbitration awards which were contrary to public policy (Petitioner's Petition for a Writ of Certiorari, pp. 10-14) and (2) The application of an "abuse of discretion" standard by the First Circuit Court of Appeals in reviewing arbitration awards despite the existence of issues of law and this Court's decision and reasoning in *First Options of Chicago, Inc. v. Kaplan,* 115 S. Ct. 1920, 1926 (1995) (Petitioner's Petition for a Writ of Certiorari, pp. 14-17).

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1. The "transparency" of the "appellant's" (or rather Petitioner's) argument is not specified nor identified. The use of the term "transparency" is curious as it comes from two individuals who, eight years after filing their first complaint and faced with a Motion to Dismiss, suddenly acquired a refreshed (and contradictory) memory as to whether they had ever even met Petitioner (Petitioner's Petition for a Writ of Certiorari, pp. 5-6).

Additionally, the Respondents apparent assertion that the arbitration awards are not particularly large (at least to them) is not any barrier to review by this Court. For example, *Illinois Central Railroad v. Crail,* 2 F.2d 287 (D.C. Minn. 1924), *rev'd,* 13 F.2d 459 (8th Cir. 1926), 21 F.2d 836 (D.C. Minn. 1927), *aff'd,* 31 F.2d 111 (8th Cir. 1929), *rev'd,* 281 U.S. 57 (1930), concerned damages in issues which were less than twelve dollars: "we would be allowing a recovery of $15.8125 in one case, and of $26.675 in the other." *Crail v. Illinois Central Railroad Co.,* 21 F.2d at 842.

As Petitioner Coffey explained in his Petition, his case is important to him. However, the Petitioner also respectfully submits that his case now presents important legal issues, to wit, to what extent may arbitrators or arbitration bodies decide their own jurisdiction when dealing with possibly time barred claims and/or claims barred by a prior judicial order and what standard should courts utilize in addressing or reviewing jurisdictional issues in arbitration matters. The Petitioner again humbly submits that he is not exaggerating when he suggests that these are national issues given their importance to the numerous parties who utilize arbitration (such as professional and self regulatory organizations, labor unions and the nation's stock and commodity exchanges) and other individuals and entities affected by arbitration.

Finally, Petitioner Michael Coffey submits that his case is representative of what can go wrong in arbitration. Arbitration, is by its very definition, intended to avoid the formalities of ordinary litigation. *Black's Law Dictionary* 105 (6th Ed. 1990) *citing Wauregan Mills, Inc. v. Textile Workers Union of America, A.F.L.-C.I.O.,* 21 Conn. Supp. 134, 137, 146 A.2d 592, 595 (Conn. Super. Ct. 1958). However, occasionally, these formalities are actually one party's rights. Thus, there are provisions for reviewing and vacating arbitration awards under

the Federal Arbitration Act. 9 U.S.C. § 10. Over the last four decades this Court and the federal courts have addressed a number of issues concerning arbitration. Oftentimes these issues have turned on whether a mere formality or an important right was disregarded (as indicated by the current conflict in the United States Circuit Courts of Appeals over the extent to which an arbitration body may decide its own jurisdiction and the subsequent standard of review to be applied by a federal court).

In this instance Michael Coffey's rights were disregarded. The arbitration body chose to ignore a judicial order which divested it of jurisdiction and then refused to follow its own rules (Petitioner's Petition for a Writ of Certiorari, pp. 10-11). The District Court and the Circuit Court of Appeals then refused to apply the appropriate standard of review (Petitioner's Petition for a Writ of Certiorari, pp. 14-17). As another petitioner to this Court once asserted:

> It makes no difference how old I am or what color I am or what church I belong to if any. The question is I did not get a fair trial.

Answer to Respondents Response to Petition for Writ of Certiorari, pp. 2-3, in *Gideon v. Cochran,* No. 890 Misc. October Term 1961 *in* 57 Landmark Briefs and Arguments of the Supreme Court: Constitutional Law at 319-320 (University Publications of America, 1975).

Although, unlike Mr. Gideon, Petitioner Coffey is not incarcerated, the point remains that Coffey has continually asserted that he did not get a fair arbitration. More importantly, Petitioner did get an appropriate standard of review in either the District Court or the Circuit Court of Appeals. When the appropriate standard of review of an informal proceeding is

taken away, then a party to that proceeding has lost important rights and can be said to have been given no standard of review at all.

Thus, Michael Coffey submits, that like so many individuals in the rich history of this Court (Joseph, Martin, Alex and Aaron Schechter, J.D. Shelley, Elmer Gertz and Manuel and Carol Kaplan to name a few), his case has come to represent important issues. *Schechter Poultry Corp. v. United States,* 295 U.S. 495, 528-529 (1935); *Shelley v. Kraemer,* 334 U.S. 1, 8 (1948); *Gertz v. Robert Welch, Inc.* 418 U.S. 323, 332 (1974); *First Options of Chicago, Inc. v. Kaplan,* 115 S. Ct. 1920, 1922-1923 (1995). Similarly, like the above individuals, Petitioner Coffey has suffered setbacks at almost every, if not every, step of the way. Thus, this Court now represents his last best hope for justice.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Michael Coffey's Petition for a Writ of Certiorari, this Court should grant a writ of certiorari.

Respectfully submitted,

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